



POLICE DEPARTMENT

September 8, 2015

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Ian Nadel  
Tax Registry No. 937160  
73 Precinct  
Disciplinary Case No. 2014-11998  
-----

The above-named member of the Department appeared before me on July 13, 2015, charged with the following:

1. Said Sergeant Ian Nadel, on or about January 9, 2013 at approximately 1145 hours, while assigned to the 66<sup>th</sup> Precinct and on duty, in the vicinity of [REDACTED] was discourteous in that he aggressively stated to Person A in sum in substance, "Who are you, who are you? Take Your phone, Get out of Here!"

P.G. 203-09, Page 1, Paragraph 2 - PUBLIC CONTACT- GENERAL

2. Said Sergeant Ian Nadel, on or about January 9, 2013 at approximately 1145 hours, while assigned to the 66<sup>th</sup> Precinct and on duty, in the vicinity of [REDACTED] engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he temporarily seized Person A's cellular phone without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT-PROHIBITED  
CONDUCT

The Civilian Complaint Review Board (CCRB) was represented by Nicole Junior, Esq., Respondent was represented by Michael Lacondi, Esq.

Respondent through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

Respondent is found Guilty of Specification 1 and Not Guilty of Specification 2.

### SUMMARY OF EVIDENCE PRESENTED

#### The CCRB's Case

CCRB called Vanessa Rosen and Miriam Sarder.

#### The Respondent's Case

Respondent testified on his own behalf.

### FINDINGS AND ANALYSIS

On January 9, 2013, at approximately 11:45 AM, Respondent was assigned as a patrol supervisor in the 60 Precinct. He responded to a 10-85 call for assistance from an officer attempting to arrest an individual in the vicinity of [REDACTED]. Respondent testified that when he arrived at the location, he observed an NYPD sergeant being carried to an ambulance; a woman screaming, causing a scene; approximately 30 officers and several other people standing around. (Tr. 34). At this time, an individual by the name of Person B was under already under arrest. The woman screaming was the arrestee's mother. One of the people Respondent described as standing around



was Person A, the arrestee's brother. Person A recorded part of the scene on a phone camera.

According to Respondent's account, when he arrived at the scene he told one or more officers to clear the area, where the woman was causing the scene, of nonessential personnel. (Tr. 38). He stated that his reason for ordering this was to ensure the safety of the officers and others and that he, "didn't want individuals behind my officers in close vicinity of my officers who were still doing police work. Still coordinating a scene... I don't want one of my cops getting hurt by someone coming from behind them. Hitting them, striking, them and trying to take a gun." (Tr. 40). Respondent testified that Person A was approximately five to ten feet from his mother at this time. (Tr. 36).

After issuing the order to clear the area, Respondent walked past where Person A was standing to go to the ambulance to speak to the Sergeant who had been injured. (Tr. 69). Respondent did not say anything to Person A at this time. (Tr. 50). As Respondent returned to the scene from the ambulance, he yelled out to the officers to cuff the mother. Respondent testified that he then approached Person A, who was still video recording the scene, and was standing within a few feet of the woman who was going to be arrested and, "grabbed him by the arm and moved him aside using necessary force." He stated he did this because he was refusing to comply with the other officers' demands to clear the scene for the officers' safety. (Tr. 41). Respondent stated he did not grab or seize Person A's phone and that he was not arrested and just walked away. (Tr. 41).

Person A did not appear to testify in this case, despite being served with a subpoena to do so. A transcript and audio recording of his interview at CCRB was



introduced into evidence by CCRB. These hearsay statements, which were not given under oath and were not subjected to the test of cross-examination, must be carefully scrutinized to determine what weight, if any, to give them.

In this case, much of what Person A stated in his interview with regard to the circumstances surrounding the discourtesy which has been charged, is either not in dispute or is corroborated by the testimony of the Respondent. For example, Person A described the Sergeant being injured while arresting his brother who was giving the officers some resistance. (CCRB Ex. 1A, 10, 12-13). He also places his mother at the scene and describes her as, distressed, upset and crying. (CCRB Ex. 1A, 18). Person A admits that he was about ten feet away from where his brother was being arrested when multiple officers told him to, "not be so close" and to get off the sidewalk. (CCRB Ex. 1A, 26).

In this case, with regard to the actual discourtesy being charged, we have the benefit of having a video recording of portions of the incident to use to test the veracity of both the Respondent and Person A's account of what happened. While Person A did not testify as to the authenticity of the recording, the Respondent described the scenes in which he appeared in the video as fair and accurate depictions of what occurred. (Tr. 52).

In the video, Respondent is seen approaching Person A on his return from the ambulance to the scene and saying first, cuff her. And then rapidly walking up to Person A and saying, "who are you, who are you? Take your phone, Get out of here!" Respondent's hand is seen in the frame of view. Then the camera angle immediately changes and it is not clear which way the lens is facing at that point.



Based on the video tape, and as admitted to by Respondent, it is substantiated that Respondent stated the words as charged in Specification 1. The question is whether this amounted to discourtesy or whether there was a necessary police purpose for Respondent to act towards Person A in this manner. Under *P.G. 208-03, Additional Data*; "When a police officer stops, detains, or arrests a person in a public area, persons who happen to be in or are attached to the area are naturally in position to and are allowed to observe the police officer's actions. This right to observe is, of course, limited by reasons of safety to all concerned, and as long as there is no substantive violation of law." This right to observe includes the right to videotape police action, subject also to any limitations which are required for safety reasons.

In this case, I do not find that Respondent's actions towards Person A were justified for safety reasons. At the time Respondent addressed Person A and went to grab and move him, Person A was standing, by Respondent's own description, five to ten feet away from where his mother stood and was merely filming with his phone.

There was no testimony to indicate that he was doing anything to interfere with the officers' necessary police actions at that time. There were numerous officers at the scene and the only person who was to be arrested, the mother, was seen in the video to be under control of the officers at the scene.

It is also clear from Respondent's actions that he did not view Person A's presence at the location to be a safety concern because he failed to address it the first time he walked past him. On that first pass-by, Person A appeared from the video to be in essentially the same spot he is in when Respondent later indicated he needed to be moved for safety reasons.

Other factors also undercut Respondent's stated safety justifications for forcefully moving Person A. First of all, Respondent does not say anything to other people who are walking on the sidewalk near the scene. In the video there are people who are not being stopped from walking on the sidewalk in front of Person A. Even as Respondent approaches Person A he allows a woman to walk between them without addressing her or telling her to move away. It also undercuts Respondent's stated reason for moving Person A in that he specifically mentions the phone when addressing Person A.

Respondent does not tell Person A simply to move away from the scene, or to clear the area as another officer does; rather he specifically tells him to take his phone and leave.

As I find no justifiable safety reason for forcefully moving Person A, I conclude that Respondent's actions and manner of addressing Person A constitute discourtesy.

With regard to Specification 2, I find Respondent to be credible in his statement that he did not seize Person A's phone. In his CCRB interview Person A stated that Respondent grabbed the phone out of his hand. He said that he did not want to release it and that Respondent forced it out of his hand. He stated that Respondent was holding on to the phone. (CCRB Ex. 1A, 38-39). The video is more consistent with Respondent's testimony of what happened in that he went to grab Person A's arm. The video does not support Person A's version that Respondent held the phone or forced the phone from Person A's hand. I therefore find the Respondent Not Guilty of seizing the phone.



PENALTY

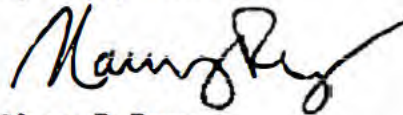
In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of one of the charged specifications, in that he spoke discourteously to Person A. CCRB recommended a penalty of five vacation days. In *Disciplinary Case No. 10315/13* (February 13, 2015), a five-year police officer with no prior disciplinary history negotiated a penalty of two vacation days for being discourteous to an individual, in that, he stated, "shut the fuck up" and refused to provide said individual his shield number.

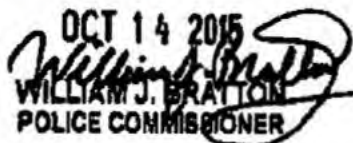
In this case, though Respondent was discourteous, he did not use profanity. As such, I find the forfeiture of one vacation day to be a more appropriate penalty.

Respectfully submitted,



Nancy R. Ryan  
Assistant Deputy Commissioner - Trials

**APPROVED**

OCT 14 2015  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
LIEUTENANT IAN NADEL  
TAX REGISTRY NO. 937160  
DISCIPLINARY CASE NO. 2014-11998

Respondent received an overall rating of 4.0 on his last three annual performance evaluations. He has been awarded thirty medals for Excellent Police Duty and one medal for Meritorious Police Duty. [REDACTED]

[REDACTED] He has no formal disciplinary history.

For your consideration.

  
Nancy R. Ryan  
Assistant Deputy Commissioner - Trials